

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
November 13, 2008 Session

CAROL TURNER v. CITY OF WINCHESTER ET AL.

Appeal from the Circuit Court for Franklin County
No. 14773-CV Buddy D. Perry, Judge

No. M2008-00401-COA-R3-CV - Filed April 17, 2009

A woman who was severely injured when her boyfriend pushed her out of a truck and ran her over claimed that the City of Winchester and Franklin County were liable for her injuries because their law enforcement officers ordered her to ride with him. The trial court granted summary judgment to the governmental defendants on the ground that under the public duty doctrine the officers did not have any particular duty to protect her, apart from their duty to the public at large. We affirm the summary judgment on a different ground. We find that the boyfriend's action was an independent, superseding and intervening cause of plaintiff's injury, since it was so remote in time and distance from the officers' actions as to break any chain of causal connection.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed

DONALD P. HARRIS, SR. J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, P.J., M.S. and RICHARD H. DINKINS, J., joined.

Joseph Scott Bean, Jr., Winchester, Tennessee, for the appellant, Carol Turner.

Keith F. Blue, Jay Russell Farrar, Nashville, Tennessee, for the appellees, City of Winchester.

Jeffrey M. Atherton, Chattanooga, Tennessee, for the appellee, County of Franklin.

OPINION

FACTUAL BACKGROUND

The events from which this lawsuit arose began with a call to 911, made by the plaintiff, Carol Turner, at 4:37 p.m. on January 3, 2004. She complained that her boyfriend, James Womack, had stolen her GMC pickup truck and driven off in it. Officer Kelly Gass of the Winchester Police Department was dispatched to Ms. Turner's house in the City of Winchester.

Meanwhile, Deputy Craig Arnold of the Franklin County Sheriff's Department saw a truck near Broadview School matching the description furnished by Ms. Turner and pulled it over. James Womack was behind the wheel and a friend, Robbie Clark, was beside him. After checking by radio and learning that Mr. Womack did not have any outstanding warrants, Deputy Arnold made Mr. Womack return to Ms. Turner's residence in the truck as the Deputy followed. When they arrived, a group of Ms. Turner's relatives and friends was waiting for them. Much shouting, cursing and arguing ensued between them and Mr. Womack.¹

Ms. Turner and Mr. Womack had been living together in Ms. Turner's house, and Mr. Womack had left the residence in the truck after an altercation. The truck in question had been purchased the previous summer for Mr. Womack to use in his work. Ms. Turner had borrowed money in her own name for the truck because Mr. Womack had bad credit. The two agreed that Mr. Womack would make the payments on the vehicle. Mr. Womack apparently made only the first two payments on the truck, and Ms. Turner was upset that he had fallen behind on the debt, in part because she was afraid it would affect her own credit.

The officers determined that they were dealing with a civil or domestic matter rather than a criminal matter. Heated discussion and argument continued, and Ms. Turner decided that Mr. Womack had to move his belongings out of her house. It was also decided that Mr. Womack would use the disputed truck to move his property, that Ms. Turner would ride with him, and that Ms. Turner's son and his friend Josh Luna would follow the truck in another vehicle, so one of them could drive it home after Mr. Womack's property was unloaded.² Mr. Womack was a concrete worker, and his property included the tools and machinery of his trade.

The above facts are undisputed, but the parties have offered differing accounts of the circumstances which led Ms. Turner to get into the truck with Mr. Womack. Ms. Turner and several other witnesses alleged that although the two officers had been warned that Mr. Womack was dangerous, Deputy Arnold ordered her to get into the truck with him, and threatened to arrest her if she didn't, thus setting in motion the chain of events that caused her injuries. Indeed, Ms. Turner's daughter-in-law Cheryl Turner testified that she warned the officers that Mr. Womack would try to kill the plaintiff if he were left alone with her.³

The officers denied that they threatened Ms. Turner with arrest if she didn't get into the truck with Mr. Womack. Deputy Arnold did acknowledge that at one point when the arguing got very loud he threatened that he would arrest everybody who was there if they didn't quiet down, and his

¹ According to Ms. Turner's deposition, her adult children detested Mr. Womack because he had abused her, and they and their friends were at her house to protect her from him.

² Ms. Turner was unable to drive because she had suffered a broken back in a motorcycle accident with Mr. Womack six months earlier and was still using a removable body cast. Mr. Womack refused to allow Ms. Turner's son to ride in the truck with him because of the hostility between them.

³ The references to testimony in this opinion all refer to deposition testimony.

testimony was corroborated by several witnesses. In any case, the officers claimed that Ms. Turner insisted on getting into the truck with Mr. Womack against their advice, because she was determined to make sure that the truck was returned to her. Since this case was decided on summary judgment, we must consider the evidence in the light most favorable to the non-moving party (Ms. Turner) and resolve all inferences in her favor. See Byrd v. Hall, 847 S.W.2d 208, 215 (Tenn. 1993). Thus, for the purposes of this appeal we deem Ms. Turner's testimony and that of the witnesses whose testimony supported her allegations to be a truthful account of what transpired.

The following account of the events that followed Ms. Turner's entry into the truck comes directly from her own vivid deposition testimony and is not disputed. Mr. Womack drove away from Ms. Turner's house at about 6:00 p.m. Robbie Clark sat in the middle of the bench seat and Ms. Turner sat by the passenger side door. Mr. Womack cursed Ms. Turner and was "driving like a maniac hollering" for the twenty or twenty-five minutes it took them to reach Sugar Cove, where Robbie Clark was dropped off. Ms. Turner acknowledged that she could have gotten out of the truck there, but she did not do so even to let Mr. Clark out. Instead, she slid around sideways "and made Robbie Clark get out around me."

Mr. Womack then said he was going to Huntland, a town in Franklin County where his father lived. Ms. Turner assumed that was where he intended to drop off his property. Before they reached that destination, the truck's engine started to labor and they stopped at a Mini-Mart. Again, Ms. Turner could have left the truck if she wanted to.

Q: Is it true that at that point if you wanted to get out of the truck, leave Womack, go back home with your son and his friend, that you could have done so at the time?

A: I probably could have if I had wanted to, but I wasn't letting him have the truck. I was there to take the truck back and that was my intentions.

After tending to the mechanical problem, the parties continued on their way. Before long they came to a place where the road was blocked by emergency vehicles because of a fire at a cotton gin. Mr. Womack then drove back the way they came and stopped at another store at a place called Elora. Mr. Womack and Ms. Turner sat in the truck for 20 minutes while Womack made calls on his cell phone. Ms. Turner admitted that once again she was free to leave the truck if she chose.

They set off again and went to the house of Wade Sanson, a friend of Mr. Womack's. Mr. Womack turned off the truck and put the keys to the ignition in his pocket. He then unloaded the truck with the help of Mr. Sanson, cursing as he did so. Mr. Sanson's wife invited Ms. Turner to come into the house, and Ms. Turner answered "no, I'm not going to get out of the truck."

Q: Why weren't you going to get out of the truck?

A: Because he was going to take off in my damn truck and it was my truck and I wasn't letting him have it. He had done stole it once.

Ms. Turner testified that she thought that Mr. Womack was going to stay at Mr. Sanson's house, but after his cement finishing machine was unloaded, he cursed Ms. Turner and said "you're not leaving me here." Then, "he jumps back in the truck and puts the key in the ignition and says, I'm not staying here you f-ing whatever, and you're going to take me back to Huntland."

From that point on, things got even uglier and more dangerous. Ms. Turner asked Mr. Womack to pull over and let her son know that they were going to Huntland. Instead, "he gassed it and took out of the driveway going almost a hundred and about hit a tree. And that's when he told me he was going to kill me and I was going to be sorry I ever met him." Ms. Turner screamed and asked to be let out.

Mr. Womack stopped for a few seconds, but didn't give Ms. Turner enough time to open the door. Then he "took off flying again." He stopped a second time. Ms. Turner opened the door to get out and he pushed her out while she was still holding onto the door handle. He then gunned the engine and she fell. Ms. Turner was pulled under the wheels of the truck and was run over. She suffered severe injuries including a broken pelvis and injuries to her head and back, all of which resulted in a lengthy hospitalization. She testified that her injuries occurred at about 7:30 p.m.

PROCEDURAL BACKGROUND

On December 21, 2004, Carol Turner filed a Complaint in the Circuit Court of Franklin County under the Tennessee Governmental Tort Liability Act (hereinafter "GTLA"), Tenn. Code Ann. § 29-20-101 et seq. She named the City of Winchester and the County of Franklin as defendants. Ms. Turner claimed that the actions of Officer Gass and Deputy Arnold were the proximate cause of her injuries, and that the defendants were liable for the negligence of their respective employees.

The defendants both filed answers in which they disputed the factual allegations recited in Ms. Turner's complaint. They denied that their employees were guilty of any negligence, and they asserted a number of affirmative defenses to the complaint. These included immunity from claims under state law and under the public duty doctrine. They also asserted that the plaintiff's injuries were caused by her own conduct and that of Mr. Womack, that the conduct of those two individuals constituted superseding intervening causes, and that even if the defendants were found to be guilty of any fault, the plaintiff's fault was greater, requiring a judgment for the defendants under the doctrine of comparative fault.

The parties took numerous depositions, including those of Ms. Turner, Officer Gass, Deputy Arnold, Ms. Turner's son Ken, her daughter Rachel, her daughter-in-law Cheryl Turner, and Ken Turner's friend, Josh Luna. The defendants both filed motions for summary judgment, which were

accompanied by statements of undisputed facts. The plaintiff filed responses to those statements as well as her own statement of disputed material facts.

The trial court conducted a summary judgment hearing on December 4, 2007. A week later, he notified counsel in a very brief letter that he was granting both motions for summary judgment. The trial court's reasoning was briefly explained in the letter as follows: "I am assuming *arguendo* that sovereign immunity under TGTLA has been removed. I must conclude, however that the public duty doctrine, a common law affirmative defense, precludes recovery." On January 25, 2008, the trial court filed an order dismissing Ms. Turner's complaint on summary judgment. The opinion letter was attached as an exhibit to the order, and was "included as if copied verbatim in this Order..." This appeal followed.

ANALYSIS

Discretionary Acts and Governmental Immunity

Local governmental entities are immune from suit in Tennessee except when the General Assembly has, by statute, explicitly permitted them to be sued. Fretwell v. Chaffin, 652 S.W.2d 755, 756 (Tenn. 1983); Brown v. Hamilton County, 126 S.W.3d 43, 46 (Tenn. Ct. App. 2003); The Tennessee Governmental Tort Liability Act, Tenn. Code Ann. § 29-2-101 et. seq., removes that immunity for injuries arising from certain types of acts by public officers and employees, but retains it for others. Tenn. Code Ann. § 29-20-205 reads in pertinent part:

Immunity from suit of all governmental entities is removed for injury proximately caused by a negligent act or omission of any employee within the scope of his employment except if the injury arises out of:

(1) the exercise or performance or the failure to exercise or perform a discretionary function, whether or not the discretion is abused

In other words, local governments retain legal immunity for negligent acts or omissions of their employees which lead to injury, if those acts or omissions involved the performance of a discretionary function. Since the GTLA does not define the term "discretionary function," our courts have had to rely upon a judicial definition of that term to determine which acts entitle local governments to immunity and those which do not. The leading case is Bowers v. City of Chattanooga, 826 S.W.2d 427 (Tenn. 1992).

In that case, a six year-old child was struck by an automobile after departing from a Chattanooga Public School bus. The parents sued the City, and after the trial court returned a judgment for the plaintiff, this court reversed, holding that any negligence attributable to the City arose from discretionary acts protected by the GTLA. Our Supreme Court granted permission to appeal, and analyzed two governmental functions which contributed to the accident: the City's decision to change the bus schedule and the bus driver's decision to stop the bus at a location where the child was forced to cross a busy thoroughfare, even though stops at other locations were feasible.

The Supreme Court noted that it had previously defined discretionary functions on the basis of a distinction between ministerial functions, where the governmental officer's duty is "absolute, certain and imperative," and all the other functions where some degree of judgment, and therefore of discretion, is involved. The court declared that the discretionary/ministerial distinction was imprecise and likely to lead to inconsistent results, and it substituted in its place an analysis which distinguishes between those acts performed at the planning level and those performed at the operational level. Id. at 430-431.

The court recognized that virtually every act by government officers or employees involves the exercise of some discretion, but held that only decisions which rise to the level of planning or policy-making, such as those made by executive and legislative officials, should be considered discretionary functions within the meaning of the GTLA and thus should remain immune from tort liability. Conversely, an act which results "from a determination based on preexisting laws, regulations, policies or standards," is an operational act, and governmental immunity is removed for such acts. Id. at 431.⁴ Thus, the City's decision to change the bus route was a planning act, and was entitled to the benefits of the discretionary function exception to the removal of liability under the GTLA, while the bus driver's decision to stop in the middle of the block and let the children out was an operational act rendering the city potentially liable.⁵

During the hearing on the summary judgment motion in the case before us, the attorneys for the defendants argued that Officer Gass and Deputy Arnold were performing a discretionary function when they allegedly ordered Ms. Turner to ride with Mr. Womack, because such a decision involved the discretionary balancing of competing policy considerations, namely the maintenance of public order and the liberty interests of the individuals involved. However, as we noted above, just because a decision by a public employee requires the exercise of discretion, that does not transform it into a discretionary act under the GTLA.

Our courts have had a number of opportunities after Bowers to apply the planning/operational test to negligent acts by governmental employees who were required to exercise some degree of discretion in order to carry out their duties. For example, in Chase v. City of Memphis, 971 S.W.2d 280 (Tenn. 1998), employees of an animal shelter failed to impound dangerous pit bulls which subsequently mauled and killed a neighbor of the animals' owner. In Hurd v. Flores, 221 S.W.3d 14, 27 (Tenn. Ct. App. 2006), a fatal accident followed a deputy's decision not to enforce a state law prohibiting a private motorist from using an interstate crossover lane. In Brown v. Hamilton County, 126 S.W.3d 43, 48 (Tenn. Ct. App. 2003), a random individual was murdered by a felon who was

⁴ A later formulation by the Supreme Court states that "[a] negligent act or omission is operational in nature and not subject to immunity when the act or omission: (1) occurs in the absence of a formulated policy guiding the conduct or omission; or (2) when the conduct deviates from an established plan or policy." Matthews v. Pickett County, 996 S.W.2d 162, 164 (Tenn. 1999)(citing Chase v. City of Memphis, 971 S.W.2d 380, 384 (Tenn.1998)).

⁵ The court also held that "where two governmental acts are concurrent causes of an injury, one of which arises from a discretionary function, the other of which does not, the removal of immunity contained in Tenn. Code Ann. § 29-20-205(1) does not apply." Bowers v. City of Chattanooga, 826 S.W.2d at 433-434.

under house arrest, but who could have been incarcerated after he violated the conditions of his arrest numerous times. In all the above cases, our courts ruled that although the public employees had exercised a degree of discretion, their acts did not involve planning or policy-making. Instead, they were operational acts, and thus the governmental defendants were not immune from liability under the GTLA.

Similarly, the police officers in the present case were required to exercise their discretion to control the situation that greeted them when they arrived at Ms. Turner's house, but that did not transform the nature of their acts from operational to discretionary. Therefore, the City of Winchester and the County of Franklin were not rendered immune from liability under the discretionary function clause of the GTLA. We must emphasize, however, that just because a governmental entity is not rendered immune under the GTLA, that does not prevent such a defendant from invoking the public duty doctrine, another possible source of immunity in appropriate cases, nor does it excuse a plaintiff from having to establish all the elements of a claim before he or she can prevail.

The Public Duty Doctrine

As noted above, the trial court chose not to address whether the defendants were entitled to retain their immunity under the GTLA, but stated that even if, *arguendo* they were not, they were protected from liability by the public duty doctrine. That doctrine "provides an additional layer of defense" for governments whose immunity has been removed through the GTLA. Matthews v. Pickett County, 996 S.W.2d 162, 165 (Tenn. 1999).

The public duty doctrine is a common law defense which shields public employees from suits for injuries that are caused by the employee's breach of a duty owed to the public at large rather than to the individual plaintiff, and it likewise shields local governmental entities from such liability. Ezell v. Cockrell, 902 S.W.2d at 397 (Tenn. 1995). It is based upon the principal that "[a]s in any other negligence action, a plaintiff must establish the existence of a duty or standard of care in an action for negligence of a government employee." Wells v. Hamblen County, No. E2004-01968-COA-R3-CV, 2005 WL 2007197 at *3 (Tenn. Ct. App. Aug. 22, 2005)(Rule 11 perm. app. denied December 19, 2005)(citing Ezell v. Cockrell, 902 S.W.2d 394, 397 (Tenn. 1995)).

This court has stated several times that under the public duty doctrine, "a duty owed to everyone is a duty owed to no one." Brown v. Hamilton County, 126 S.W.3d at 48; Wells v. Hamblen County, 2005 WL 2007197 at *3. Thus, under that doctrine, "private citizens, as such, cannot maintain an action complaining of the wrongful acts of public officials unless such private citizens aver special interest or a special injury not common to the public generally." Bennett v. Stutts, 521 S.W.2d 575, 576 (Tenn. 1975).

The public duty doctrine has long been accepted in most jurisdictions because it advances a number of sound public policy purposes. Ezell, 902 S.W.2d at 397-398. One such purpose is to maintain the effectiveness of law enforcement in complicated and dangerous situations. Without the

application of the doctrine, police officers would continually have to decide whether to avoid liability for personal injury by arresting all persons who pose any potential threat to the public or whether to avoid liability for false imprisonment by not arresting those persons. The public duty doctrine “serves the important purpose of preventing excessive court intervention into the governmental process by protecting the exercise of law enforcement discretion.” Id. at 400-401.

In Ezell v. Cockrell, the Police Chief of Elkton, Tennessee approached a woman who entered her car after drinking in a bar in Giles County. He asked her to step out of the car and concluded that she was too intoxicated to drive. At that point, another patron came out of the bar and volunteered to drive the woman home. The Police Chief allowed him to do so, and an hour later he collided head-on with a pickup truck while driving on the wrong side of the road with the headlights off. The driver of the car was killed, as was one passenger in the truck, while another was seriously injured.

The surviving truck passenger sued a number of defendants including the estate of the deceased driver, the owners of the bar and the City of Elkton. She alleged among other things that the Chief was negligent for allowing a man to drive who he knew or should have known was too intoxicated to do so safely. Our Supreme Court ruled that the public duty doctrine survived the enactment of the GTLA, that as there was no connection between the officer and the injured parties in the truck no special duty had arisen between them, and that the public duty doctrine rendered the City immune from suit.

The public duty doctrine was also found applicable in Hurd v. Flores, which we referenced above. We held that a Smith County deputy sheriff who chose not to enforce the state law prohibiting a private motorist from using an interstate crossover lane did not owe a particular duty to the motorist who was killed when she pulled into oncoming traffic while attempting to follow the driver of a tow truck through the crossover. Thus, although the County was not immune from liability for the deputy’s actions under the GTLA, it was immune under the public duty doctrine. Hurd v. Flores, 221 S.W.3d at 27-28.

Hurd v. Woolfork, 959 S.W.2d 578 (Tenn. Ct. App. 1997) involved a suit brought by the parents of a murdered woman against the Sheriff of Madison County for failing to promptly serve an arrest warrant against the man who subsequently murdered her.⁶ The warrant was issued on September 7, 1994, and the victim was murdered on September 17, 1994. There were no allegations in the complaint that the victim had contacted or been contacted by the Sheriff or the Sheriff’s Department about the threatening conduct of the murderer. We affirmed the trial court’s dismissal of the suit, holding that a sheriff’s duty to keep the peace includes the execution of arrest warrants, and is a public duty “not owed to any individual in particular.” Id. at 581 (citing Ezell v. Cockrell, 902 S.W.2d at 397).

⁶We have found no indications of any connection between the plaintiffs in Hurd v. Flores and the plaintiffs in Hurd v. Woolfork.

In the present case, the defendants suggested that their employees did not owe any particular duty to Ms. Turner, and that if they ordered her to leave with Mr. Womack (which they deny) such actions should be considered to have been taken in furtherance of their general duty to the public to keep the peace. They accordingly contended that they owed no greater duty to Ms. Turner than to any other member of the public who might be harmed by a breach of the peace. It appears to us, however, that the alleged conduct of Officer Gass and Deputy Arnold placed them in a relationship with Ms. Turner which distinguishes this case from those cited above.

The Special Duty Exception

In Ezell v. Cockrell, our Supreme Court recognized an exception to the immunity enjoyed by local governmental entities under the public duty doctrine, which arises where a special relationship between the plaintiff and the public employee creates a special duty which is more specific to the plaintiff than the duty owed by the employee to the public at large. Ezell, 902 S.W.2d at 401. The court noted that while the Special dutyException was recognized by most jurisdictions applying the public duty doctrine, its application varied from jurisdiction to jurisdiction. After discussing various formulations, the court concluded that,

...a special duty of care exists when 1) officials, by their actions, affirmatively undertake to protect the plaintiff, and the plaintiff relies upon the undertaking; 2) a statute specifically provides for a cause of action against an official or municipality for injuries resulting to a particular class of individuals, of which the plaintiff is a member, from failure to enforce certain laws; or 3) the plaintiff alleges a cause of action involving intent, malice, or reckless misconduct.

Id. at 402.

Our courts have found the Special dutyexception to be applicable in a number of cases that were decided after the publication of Ezell v. Cockrell, most frequently when public officials have affirmatively tried to protect the plaintiff, and the plaintiff relied upon that protection to his or her detriment. For example, in Matthews v. Pickett County, 996 S.W.2d 162 (Tenn. 1999) the Sixth Circuit asked our Supreme Court to answer two certified questions of law: whether an order of protection could give rise to a special duty to protect a plaintiff and whether such a duty extends to the plaintiff's property.

In that case, the plaintiff had obtained an order of protection against her estranged husband after he assaulted, beat and sexually violated her. The order stated that the husband "shall be arrested by a law enforcement officer without a warrant if that officer has reasonable cause to believe that [husband] has violated or is violating this Order." On the eve of their final divorce hearing, the wife telephoned the sheriff's office three times. The first time she reported that the husband had tried to break into her house, the second that he threatened to kill her, and the third time that he set off firecrackers under her propane tank. When officers finally arrived, they spoke to the husband but

didn't arrest him. Due to that failure and other subsequent failures, the wife's house was destroyed by fire later that night.

The Court found that the GTLA did not immunize the county from liability and that the first ground enumerated in Ezell for the existence of the special duty exception applied because the order of protection did not apply to the public at large, but was issued solely for the purpose of protecting the wife, and that she relied on the order of protection by calling the sheriff's department for assistance. The court also held that once the county's immunity was removed under the special duty exception, it could be held liable for any damages caused by its breach of that duty, including damage to property.

Chase v. City of Memphis, 971 S.W.2d 280 (Tenn. 1998) was a case in which a homeowner filed a vicious animal complaint after her neighbor's pit bulls dug under a back yard fence and attacked and mauled her dog. Employees of the Animal Shelter impounded the pit bulls for evaluation, conducted a vicious animal hearing and determined that they were dangerous but not vicious. They sent a letter to the dogs' owner, ordering him to repair any deficiencies in his fence and to enroll the dogs in obedience training. The letter stated that failure to comply with the Animal Shelter's order would result in the immediate seizure of the animal. A copy of the letter was sent to the homeowner and the dogs were returned to their owner.

Tragically, the shelter failed to monitor the owner's compliance with its order and the owner failed to do what the order required. The ultimate result was that the homeowner was mauled to death by the pit bulls. The administrator of the homeowner's estate sued the city. Our Supreme Court noted that the decedent did not appeal the Animal Shelter's order, but relied upon its employees to protect her by following through on their promises. Accordingly, the Court found that the special duty exception to the public duty doctrine was applicable, and that the City could be held liable for the plaintiff's damages.

While the present case is not perfectly analogous to the two cited above, it presents some significant elements in common with them. Ms. Turner invoked the aid of law enforcement by calling 911 to ask for help in retrieving her truck. Two law enforcement officers arrived on the scene in response to her request, and she thereafter relied on their assistance. Faced with an emotionally charged and complicated situation, the officers allegedly ordered Ms. Turner to get into the truck with Mr. Womack, even though some of her friends and family members warned them that he was dangerous.

The alleged actions of the officers deprived Ms. Turner of her immediate freedom of action and her ability to avoid the danger that unfortunately proved itself to be all too real. Thus, their affirmative action created a special relationship with Ms. Turner and a specific duty of protection above and beyond the duty they owed to the public in general. We therefore conclude that Ms. Turner was entitled to the benefits of the special duty exception and that the trial court erred in ruling that the defendants were immune from liability under the public duty doctrine.

Intervening and Superseding Cause

Although we have found that the governmental defendants in this case are not immune from liability, we still must evaluate the defendants' motion for summary judgment in accordance with the familiar standards for such determinations. Summary judgment may only be granted when that the filings supporting the motion show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Tenn. R. Civ. P. 56.04; Blair v. West Town Mall, 130 S.W.3d 761, 764 (Tenn. 2004); Pero's Steak & Spaghetti House v. Lee, 90 S.W.3d 614, 620 (Tenn. 2002); Byrd v. Hall, 847 S.W.2d 208 at 210.

The trial court must consider the evidence in the light most favorable to the non-moving party, and must afford that party all reasonable inferences. Draper v. Westerfield, 181 S.W.3d 283, 288 (Tenn. 2005); Doe v. HCA Health Services, Inc., 46 S.W.3d 191, 196 (Tenn. 2001); Memphis Housing Authority v. Thompson, 38 S.W.3d 504, 507 (Tenn. 2001). If a factual dispute exists, the court must determine whether the disputed fact is material to the claim or defense upon which the summary judgment is predicated and whether the disputed fact creates a genuine issue for trial. Byrd v. Hall, 847 S.W.2d at 214; Rutherford v. Polar Tank Trailer, Inc., 978 S.W.2d 102, 104 (Tenn. Ct. App. 1998). Courts should grant summary judgment only when the facts and the inferences to be drawn from the facts permit a reasonable person to reach only one conclusion. McCall v. Wilder, 913 S.W.2d 153 (Tenn. 1995); Carvell v. Bottoms, 900 S.W. 2d 23, 26 (Tenn. 1995).

A trial court's decision on a motion for summary judgment enjoys no presumption of correctness on appeal. Draper v. Westerfield, 181 S.W.3d at 288; BellSouth Advertising & Publishing Co. v. Johnson, 100 S.W.3d 202, 205 (Tenn. 2003); Scott v. Ashland Healthcare Ctr., Inc., 49 S.W.3d 281, 284 (Tenn. 2001); Penley v. Honda Motor Co., 31 S.W.3d 181, 183 (Tenn. 2000). Accordingly, this court must review the record de novo and make a fresh determination of whether the requirements of Tenn. R. Civ. P. 56 have been met. Eadie v. Complete Co., Inc., 142 S.W.3d 288, 291 (Tenn. 2004); Blair v. West Town Mall, 130 S.W.3d 761 at 763; Staples v. CBL & Assoc., 15 S.W.3d 83, 88 (Tenn. 2000).

To establish a claim for negligence, a plaintiff must prove the following elements: (1) a duty of care owed by the defendant to the plaintiff; (2) conduct by the defendant falling below the standard of care amounting to a breach of that duty; (3) an injury or loss; (4) causation in fact; and (5) proximate or legal cause.⁷ Hale v. Ostrow, 166 S.W.3d 713, 716 (Tenn. 2005); Coln v. City of Savannah, 966 S.W.2d 34, 39 (Tenn. 1998); McCall v. Wilder, 913 S.W.2d 150, 153 (Tenn. 1995). At the summary judgment stage, the moving party must negate an essential element of the non-moving party's claim or show that the non-moving party cannot establish an essential element of the claim at trial. Hannan v. Alltel Publishing Co. 270 S.W.3d 1, 6-7 (Tenn. 2008). Thus, the defendants in this case may demonstrate that they are entitled to summary judgment by showing that

⁷The term "legal cause" now appears to be preferable to "proximate cause." Rains v. Bend of the River, 124 S.W.3d 580, 592 (Tenn. Ct. App. 2003).

the plaintiff will be unable to raise a material question of fact as to at least one of the five elements listed above.

As our previous discussion indicated, the officers owed a special duty of care to the plaintiff aside from their general duty to the public at large, and there are disputed material facts as to whether the officers' conduct breached that duty. Further, there can be no doubt that the plaintiff suffered an injury or loss, and it is at least debatable that under the "but-for" standard, the officers' conduct could be considered a cause in fact of that injury. See Waste Management, Inc. of Tennessee v. South Central Bell Tel. Co., 15 S.W.3d 425, 431 (Tenn. Ct. App. 1997). Our discussion must therefore focus on proximate or legal cause, as we consider whether the undisputed facts as to plaintiff's own conduct negate her claim that the conduct of the employees of the City of Winchester and the County of Franklin were the proximate or legal cause of her injuries.

The element of legal causation requires that the defendant's conduct must have been a "substantial factor" in bringing about the harm being complained of, that there is no statute or policy that relieves the defendant from liability, and that the harm giving rise to the action was reasonably foreseeable by a person of ordinary intelligence and prudence. Naifeh v. Valley Forge Life Ins. Co., 204 S.W.3d 758, 771 (Tenn. 2006). Liability is not necessarily imposed for every act in a chain of causation that leads to injury. This court has said, "legal cause connotes a policy decision by the judiciary to deny liability for otherwise actionable conduct. It requires the courts to establish the boundary of legal liability, using mixed considerations of logic, common sense, justice, policy, and precedent." Waste Management, Inc., 15 S.W.3d at 431 (internal citations omitted); See also Mullins v. Seaboard Coastline Railway, 517 S.W.2d 198, 201 (Tenn. Ct. App. 1974). One of the rules of law that will relieve a negligent actor from liability is the doctrine of intervening and superseding cause.

That doctrine, which survived the Tennessee Supreme Court's adoption of comparative fault, provides that a negligent actor will be relieved from liability when a new and independent cause intervenes to produce a result that could not have been foreseen. The customary explanation of the doctrine is that an independent, intervening cause breaks the chain of legal causation between the original actor's conduct and the eventual injury. McClung v. Delta Square Ltd. Partnership, 937 S.W.2d 891, 905 (Tenn. 1996); Haynes v. Hamilton County, 883 S.W.2d 606, 612 (Tenn. 1994); Waste Management, Inc., 15 S.W.3d 425 at 432. The doctrine applies only when the intervening act (1) was sufficient by itself to cause the injury, (2) was not reasonably foreseeable to the negligent actor, and (3) was not a normal response to the negligent actor's conduct. Id..

For example, in Rains v. Bend of the River, 124 S.W.3d 580 (Tenn. Ct. App. 2003) the parents of an eighteen year old who committed suicide by shooting himself with his parents' handgun brought suit against the merchant who sold ammunition to the young man, despite a statute prohibiting the sale of that kind of ammunition to individuals below the age of twenty-one. We held that the trial court should have granted summary judgment to the merchant because the suicide was not reasonably foreseeable and was an independent intervening cause of the young man's death.

In the present case, we may rightly consider Ms. Turner's insistence on remaining in the truck she was riding in to be the intervening act that caused her injury.⁸ Ms. Turner's own testimony showed that she could have left the truck without difficulty at least four times during the course of her fateful ride: at Sugar Cove when Robbie Clark was dropped off; at the store in Huntland; at the store in Elora; and at Wade Sanson's house. We note that Ms. Turner further testified that during the hour and half that elapsed between her entry into the truck and her ultimate injury, Mr. Womack drove like a maniac, that he yelled and hollered, and that he cursed her repeatedly. If the officers had indeed ordered her to enter the truck against her will, was it reasonably foreseeable that she would have stayed in the truck despite the conduct of Mr. Womack and the multiple opportunities to leave.

In light of the hostility and recklessness that Mr. Womack showed, we do not consider it foreseeable that she would remain in the truck when she could have left it without difficulty nor do we consider her remaining in the truck to be a normal response to the situation caused by the alleged order of the officers. Thus, we consider Ms. Turner's evidence insufficient to establish legal cause because even if, as Ms. Turner contends, the officers did order her to get into the truck with Mr. Womack, the inferences to be drawn from subsequent events permit reasonable minds to reach only one conclusion: that Ms. Turner's decision to remain in the truck despite four admitted opportunities to exit safely was an intervening, superceding cause of her injury. Ms. Turner did not allege that she remained in the truck because she had been ordered to do so or because of fear that the officers would impose legal consequences on her for doing so, but because, as she repeatedly testified, she was unwilling to abandon her truck. That testimony, in our opinion, shows that Ms. Turner cannot establish an essential element of her claim at trial and entitles the defendants to summary judgment. See Hannan, 270 S.W.3d at 7.

Plaintiff's Remaining Argument on Appeal

Ms. Turner has attempted to rescue her claim in this court by citing the "Statement of Disputed Material Facts," which she submitted to the trial court. That statement reads as follows:

1. There is a dispute as to whether Jimmy Womack had been using alcohol on the date in question.
2. There is a dispute as to whether officers ordered Carol Turner to get into the vehicle with Jimmy Womack or threatened to arrest her if she did not get in to the vehicle with Womack.

⁸The most direct cause of the plaintiff's injury was of course the intentional conduct of Mr. Womack. However, we do not consider this to be the superceding cause because it is well established that an intentional act which causes injury does not cut off the liability of a negligent party who has a duty to protect the injured party from the foreseeable risk of the intentional act. See Turner v. Jordan, 957 S.W.2d 815 (Tenn. 1997). As we noted earlier, legal cause has been defined as that act or omission that immediately causes or fails to prevent the injury, and the proof shows that Ms. Turner could have prevented her injury by simply exiting the truck during any of the opportunities that presented themselves after she and Mr. Womack left her home.

3. There is a dispute as to whether Plaintiff's sister-in-law, Cheryl Turner, warned officers that Womack would try to kill Plaintiff if left alone with her.
4. There is a dispute as to whether officers were presented with "alternative solutions" to the problem other than placing Plaintiff alone in the disputed vehicle with Womack.

Ms. Turner argues that she is entitled to prevail because of the well-known standard which prohibits the grant of summary judgment if there is a dispute as to any material facts. We note, however, that even if a factual dispute exists, we must determine whether the disputed fact is material to the claim or defense upon which the summary judgment is predicated and whether the disputed fact creates a genuine issue for trial. Byrd v. Hall, 847 S.W.2d at 214; Rutherford v. Polar Tank Trailer, Inc., 978 S.W.2d at 104.

The facts in dispute cited by Ms. Turner all relate to the situation prior to the alleged decision by the police officers to order her to accompany Mr. Womack in the disputed truck. None of them are relevant to the question of whether the officers' actions were the proximate or legal cause of the plaintiff's injuries. Our courts have repeatedly stated that when a party fails to raise a genuine issue of material fact as to any element of a claim, all the other facts are thereby rendered immaterial. Alexander v. Memphis Individual Practice Ass'n, 870 S.W.2d 278, 280 (Tenn. 1993); Byrd 847 S.W.2d at 213 (Tenn. 1993); Armoneit v. Elliott Crane Service, Inc., 65 S.W.3d 623, 628 (Tenn. Ct. App. 2001); Austin v. Shelby County Government, 3 S.W.3d 474, 481 (Tenn. Ct. App. 1999). Thus, the plaintiff's argument is without merit.

CONCLUSION

The judgment of the trial court is affirmed for the reasons stated above. We remand this case to the Circuit Court of Franklin County for any further proceedings necessary. Costs of this appeal shall be taxed to the appellant, Carol Turner.

DONALD P. HARRIS, SR. JUDGE